

APPENDIX

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Federal Power Act

SEC. 10(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security so theretofore authorized or the proceeds thereof

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may be applied, subject always to the requirements of subsection (a) of this section.

Excerpt From Hearings on H.R. 5423, Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., pp. 554-555

Mr. Pettengill. Mr. DeVane, I want to compliment you upon the patience with which you have stood here for almost 4 hours and answered every question we have asked, and we are asking them only for the purpose of obtaining information. We do not know as much about this as you do. I would like to ask you this question: Here is a market, let us say (indicating) in my home city; here is a generating plant, and we will say that entire market is being supplied by this generating plant, and it is capable of furnishing sufficient power.

Here is another generating plant owned by a competitor of this one (indicating and illustrating), and does not have access to this market. It has no transmission lines. Now, do you agree that by order of your Commission you may require this company (indicating) to carry that generating plant's (indicating) energy to that market in competition with the original company?

Mr. DeVane. No, sir; if I understand your question, the answer to that is "no."

Mr. Pettengill. Well, section 202(a), makes it the duty of every public utility to transmit energy for any person, and so forth, and to furnish and maintain such services and facilities, and so forth. Now, how do you distinguish the language of the bill from the illustration that I have drawn?

Mr. DeVane. You are talking about the power now; you are talking about a power to compel transmission?

Mr. Pettengill. Yes.

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Mr. DeVane. Power to compel carriers to transmit energy?

Mr. Pettengill. Yes.

Mr. DeVane. That power is complete insofar as it may require transmission in certain cases. There is nothing in this bill, however, that provides for competition. It is entirely silent in that respect and differs from the language of the Interstate Commerce Commission, if that is what you may have in mind.

There, as you recall, Congress provided that competition should be preserved and if Congress should desire to establish competition in this industry it should be written in any legislation adopted by Congress. There is nothing in this bill that permits one utility to enter another utility's field and in doing so to require the other utility to transport its power for the purpose. There is nothing like that in this bill.

Mr. Pettengill. And, if the language is capable of that interpretation, you are willing to have it clarified or excluded?

Mr. DeVane. If that is necessary for the purpose of clarification, yes; but when I make these concessions, as we move along here, I want it clearly understood upon the record, that I think this bill is not ambiguous, and I think the bill accomplishes the purposes that I have stated.

Mr. Pettengill. Well, what sort of situation would the language of 202(a) apply?

Mr. DeVane. Two hundred and two?

Mr. Pettengill. Which requires every public utility to transmit energy for any persons.

Now, on the face of the bill, does not that require this line [indicating] the generator furnishing this market, to

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carry its competitor's energy into that market, if they can get your consent for it?

Mr. DeVane. We will take a company that lies between one producing energy and another needing energy, and we will assume that the middle company cannot furnish the needed energy to its neighbor but has facilities that are available for transmitting the energy from the producing company to the one in need. The Commission could require the use of those facilities in order to meet that situation.

Mr. Pettengill. But not to take the company that owns the line; not to take its market away from it?

Mr. DeVane. No, not to take the market away from it; no, sir.

Mr. Pettengill. Well, now, suppose the second generating plant does not have plant facilities, power lines, to the market, and comes to you and says, "We will furnish the energy to this market much cheaper than the company in business at the present time." What are you going to do with that? Are you going to deny these people here [indicating] the cheaper energy which generating plant no. 2 offers to furnish them?

Mr. DeVane. You have now—

Mr. Pettengill. We have two generating plants to furnish this market. One is the existing plant whose distribution lines are there and has sufficient power to furnish the market.

This generating plant [indicating] over here has no transmission lines to that market, but it says, "If you will compel this company to carry our energy there, we will furnish that market much cheaper than this company is doing it."

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Now, what are you going to do in that situation? Are you going to say to these people. "No. I am sorry, but you have got to pay the higher price which these people charge!"

Mr. DeVane. I do not know the answer to that question right now. That is as frank as I can be. My answer is that the law will be administered in the public interest and what is right in the circumstances will be done.